No. 82-1858

In the Supreme Court of the United States

OCTOBER TERM, 1983

STANLEY SEYMOUR PALMER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the search warrants in this case particularly described the place to be searched.

2. Whether petitioner's detention during the search triggered the provisions of the Speedy Trial Act of 1974, 18 U.S.C. (& Supp. V) 3161 *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals affirming petitioner's convictions (Pet. App. 43-60) is reported at 704 F.2d 723. The opinion of the court of appeals reversing the district court's suppression order (Pet. App. 27-42) is reported at 667 F.2d 1118. The opinion of the district court (Pet. Supp. App. 1-38) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 5, 1983. The petition for a writ of certiorari was filed on May 3, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Following a jury trial in the United States District Court for the Middle District of North Carolina, petitioner was convicted of conducting an illegal gambling business, in

violation of 18 U.S.C. 1955, and of making interstate telephone calls to facilitate the gambling business, in violation of 18 U.S.C. 1952(a)(3). Petitioner was sentenced to imprisonment for 27 months and fined $10,000 on the former count; imposition of sentence was suspended and petitioner was placed on probation for five years on the latter count. The court of appeals affirmed (Pet. App. 43-60).

2. Prior to trial petitioner and a co-defendant, Stephenson Alexander Price, moved to suppress evidence seized on December 16, 1979 under two warrants authorizing a search of their persons and the premises at Carl's Carpet Mart, Inc., in Winston-Salem, North Carolina, for gambling paraphernalia. They claimed that the warrants did not give the agents the authority to search the premises. The pertinent facts concerning the search are set forth in the court of appeals' initial opinion (Pet. App. 29-36).

Briefly, the warrants were based upon an affidavit showing that the FBI had learned through informants that petitioner and Price conducted a bookmaking business over two of the four telephones billed and listed to Carl's Carpet Mart, a retail store selling carpets (Pet. App. 30-31). In the fall of 1979, FBI Agent William T. Schatzman and others conducted spot checks at the shopping center where Carl's Carpet Mart and three other businesses were located. Adjacent to the premises occupied by Carl's Carpet Mart were premises with the name "Miller-Arrington" over the entrance. The front part of the Miller-Arrington premises had once been occupied by an appliance store. Its rear area was partitioned off into private offices (*id.* at 32-33).[1]

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[1]Before the search, Schatzman had gone into the carpet store posing as a customer, but he did not go into the rear portion of the store because it was not open to the public (C.A. App. 142-143).

During his surveillance Schatzman saw petitioner and Price enter and leave through the Miller-Arrington front door (*id.* at 33).

In executing the warrants, an FBI agent knocked on the front entrance of the Miller-Arrington premises. When petitioner unlocked the door, the agents notified him of the search warrants and then walked through the apparently abandoned front portion to the rear offices where they found Price (Tr. 353, 385-388) and the two telephones listed to Carl's Carpet Mart. The agents seized gambling records from the offices and from petitioner and Price pursuant to the warrants, detaining both petitioner and Price during a three hour search. At the conclusion of the search petitioner and Price signed returns on the warrants describing the premises searched as "Carl's Carpet Mart" (Pet. App. 35-36).

The district court granted petitioner's motion to suppress (Pet. Supp. App. 1-38). It held "that search warrants are to be strictly construed" (*id.* at 37), and that here the place described—Carl's Carpet Mart, Inc.—did not encompass the adjacent rear offices behind the Miller-Arrington store front.

3. On the government's interlocutory appeal, the court of appeals reversed (Pet. App. 27-37), concluding that the returns on the warrants signed by petitioner and Price amounted to "admission[s] * * * that the search took place on the premises authorized in the search warrants" (*id.* at 36). The court alternatively held that "[i]f a warrant specifies a place under the designation by which it is commonly known, though the exact description may not be correct, the warrant will be upheld" (*id.* at 36-37). Judge Hall dissented (*id.* at 37-42).

4. At trial, the government's evidence showed that petitioner and others conducted an illegal gambling business, in violation of 18 U.S.C. 1955, and made interstate phone calls

to facilitate the business in violation of 18 U.S.C. 1952(a)(3). The court of appeals affirmed petitioner's convictions (Pet. App. 43-49).

ARGUMENT

1. Petitioner contends (Pet. 11-20) that the evidence seized under the search warrants should have been suppressed because the warrants failed specifically to describe the place actually searched by the federal agents. This contention lacks merit.

A search warrant must be read in a common sense fashion. See *Illinois* v. *Gates*, No. 81-430 (June 8, 1983), slip op. 20-21. In *Steele* v. *United States*, 267 U.S. 498, 503 (1925), this Court held that, in determining whether the identification of the place to be searched satisfies the Fourth Amendment's command of specificity, "[i]t is enough if the description is such that the officer with a search warrant can with reasonable effort ascertain and identify the place intended." As one commentator has noted, "the primary purpose of this limitation is to minimize the risk that officers executing search warrants will by mistake search a place other than the place intended by the magistrate." 2 W. LaFave, *Search and Seizure* § 4.5, at 72 (1978).

In a variety of situations, courts have found that imprecise and faulty descriptions of premises in warrants did not result in violations of the Fourth Amendment or merit suppression of evidence. For example, in *United States* v. *Gitcho*, 601 F.2d 369, 372 (8th Cir.), cert. denied, 444 U.S. 871 (1979), the court upheld a search where the address stated in the warrant, though incorrect, was reasonable for the location intended. The court said: "Of even greater importance is the fact that the agents executing the warrant personally knew which premises were intended to be searched, and those premises were under constant surveillance while the warrant was obtained. The premises which

were intended to be searched were, in fact, those actually searched." See also *United States* v. *Darensbourg,* 520 F.2d 985, 987 (5th Cir.), modified on other grounds, 524 F.2d 233 (1975). In other cases, ambiguities and defects in the description in the warrant have been found to be cured by the specificity in the affidavit when the affidavit accompanies the warrant. *United States* v. *Gill,* 623 F.2d 540, 543-544 (8th Cir.), cert. denied, 449 U.S. 873 (1980); *Moore* v. *United States,* 461 F.2d 1236 (D.C. Cir. 1972).[2] So long as there is no reasonable probability that the wrong premises might be searched, a vague or erroneous description of premises in a warrant has been found to be constitutionally sufficient.

Under these principles, the warrants here were sufficient to authorize the search that occurred. The right premises were searched, and there was no reasonable probability that the FBI agents, including the affiant, would have thought that the place to be searched was any other than the area occupied by Price and petitioner, where the phones listed to Carl's Carpet Mart were located.

The affidavit for the warrants focused on the telephones, specifying how petitioner and Price were carrying on an illegal gambling business over Carl's Carpet Mart telephones, and that gambling records were generally kept in close proximity to such telephones. It also showed that the gambling business was conducted in the area searched when football games were televised. The magistrate, in issuing the warrants to search petitioner and Price at Carl's Carpet Mart, obviously concluded that they would be found near the phones used for making wagers. When he also authorized the search of the premises at Carl's Carpet Mart, he

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[2]In this case the affidavit was not incorporated in the warrant (see Pet. Supp. App. 22), although Agent Schatzman, the author of the affidavit, assisted in executing the warrant (*id.* at 15).

obviously intended a search of the area in the proximity of the phones, an area where petitioner and Price could have been expected to have the records they were making while conducting the gambling business. By listing the telephones used for gambling in the adjacent area in its name, Carl's Carpet Mart itself created the appearance that the two areas were part of the same business. It also concealed the identity of petitioner and Price and the business that they were conducting, and aided the gambling operation by obtaining phone service under the guise of a legitimate business. This commingling of telephone service made it natural for agents to assume that the area searched was part of the carpet store. Cf. *National City Trading Corp.* v. *United States,* 635 F.2d 1020, 1024-1025 (2d Cir. 1980).

Nor did the sign "Miller-Arrington" on the window require a limitation in the warrant. The inside of the Miller-Arrington premises looked like an abandoned business; there was no indication that it was in current use as either an appliance store or an auction site, activities that had occurred there in the past. Rather, the company in whose name the telephones were listed — Carl's Carpet Mart, whose owner also owned the shopping center — could reasonably have been thought to have taken back the premises from its previous tenant.[3]

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[3]Nor does petitioner have any justifiable complaint, based on any reasonable expectation of privacy, that the warrant was somehow overbroad in describing the Carpet Mart itself. The scope of his Fourth Amendment privacy interest extended only to the area that he and Price were occupying, see *Rakas* v. *Illinois,* 439 U.S. 128 (1978), an area that was unquestionably subject to search under the most precise description. It did not encompass the Carpet Mart, and the breadth of the warrant consequently in no way could have affected or harmed this interest.

We recognize that the court of appeals gave, as one reason for upholding the warrants, that petitioner and Palmer each signed a return describing the premises as Carl's Carpet Mart. Whatever weight should properly be given to the designation of the premises subscribed to by petitioner—a factor that we believe the court of appeals properly considered—in this case the description used in the warrants was adequate even without regard to that factor.[4]

In any event, the fact-bound issues in this case were fully considered by the court of appeals, and present no question of sufficient importance to justify further review.

2. Petitioner also contends (Pet. 23-25) that his detention during the search amounted to an arrest on December 16, 1979, and that his subsequent indictment on October 27, 1980, violated the Speedy Trial Act of 1974, 18 U.S.C. 3161(b), because it was not filed within thirty days of his arrest. The court of appeals properly rejected this claim (Pet. App. 48-49). As the court concluded, the detention was not an arrest, but rather a detention during the search. *Michigan* v. *Summers*, 452 U.S. 692, 705 (1981). In any event, as other courts of appeals have held, 18 U.S.C. 3162(a)(1) effectively limits Section 3161(b) to situations

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[4]The cases relied on by petitioner—*United States* v. *Kaye*, 432 F.2d 647 (D.C. Cir. 1970), and *Keiningham* v. *United States*, 287 F.2d 126 (D.C. Cir. 1960), are readily distinguishable. In each of those cases the government was denied authority to extend its search from the described premises to include an adjacent apartment, when the authorized search proved fruitless. In this case, by contrast, the only place searched was the one where petitioner, Price, and the telephones were believed to be—and in fact were—located. And the only deficiency in the warrant, if such it was, proved to be the lack of a connecting passageway to the Carpet Mart—a fact that could not be ascertained until the warrant was executed.

where formal charges have been filed. See, *e.g.*, *United States* v. *Candelaria*, 704 F.2d 1129, 1131 (9th Cir. 1983); *United States* v. *Kubiak*, 704 F.2d 1545, 1548 (11th Cir. 1983); *United States* v. *Jones*, 676 F.2d 327, 329 (8th Cir. 1982), cert. denied, No. 81-2227 (Oct. 4, 198

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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